



JESSE KREMER

STATE REPRESENTATIVE • 59TH ASSEMBLY DISTRICT

Good morning Mr. Chairman and committee members,

I am bringing AB 469 forward to address the growing issue of privacy in the most private places in our schools - bathrooms and locker rooms. A case in my own district, coupled with growing media attention to various cases around the country have signaled the need for clear direction in this area.

Title IX, the federal law governing this issue in schools that receive federal dollars, states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..." Section 1686 of Title IX also mentions, "...nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 34 CFR §106.33, the Department of Education's own regulations, states, "A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."

AB 469 will, in accordance with federal regulations, and Wisconsin's §120.12 (12), require school boards to designate separate restrooms and changing rooms for use by members of only that sex and provide parents and legal guardians a pathway to privately request reasonable, alternative accommodations such as a single occupancy restroom or changing room. Earlier this week I offered an amendment to this bill that, if adopted, would allow any student, through parental action, to request alternate accommodations for any purpose, including, but not limited to, gender association. This policy would be helpful for students who experience discomfort when changing in public, who are bullied, or who do not identify with their biological gender. This bill also provides a 30 day window for a school district to address a problem before any legal action is taken.

Why is a statewide policy needed in Wisconsin? During the past year, the current federal administration's Department of Justice (DOJ) and Department of Education (DOE) have attempted to rewrite current law with opinionated policy revisions to impose the agenda that any student, in a school that receives federal dollars, should be allowed to use any bathroom, locker room or shower facility, no matter their sex. Since the 1970's, federal law has prohibited any school or program receiving funds under Title IX from discriminating on the basis of sex. In April of last year, the DOE's Office for Civil Rights (OCR) issued official guidance to clarify that Title IX also includes protection for those who "claim discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity..."



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Recently, two particular schools have received national attention for alleged Title IX violations. These examples are important because similar policies are currently being used by districts around the state and may be subject to similar legal action.

Gloucester County, Virginia

Last December, the Gloucester County School Board listened to an overwhelming number of complaints from parents of students at Gloucester High School after a biologically female student began to use male facilities with permission from the school. On a 6-1 vote, the Board implemented a policy that restricted bathroom use to students of “the corresponding biological genders.” After the policy was enacted, Gloucester High School also added three, single-stall, unisex bathrooms and increased privacy around stalls and urinals. In June, the ACLU filed suit on behalf of the same student to overturn the school’s policy. A subsequent request for preliminary injunction was also filed by the ACLU, with briefs in support filed by the DOJ and DOE. In September, a federal judge sided with the School Board and dismissed the ACLU’s sex discrimination claim.

Palatine, Illinois

Just this past month, Palatine Illinois Township School District #211 was threatened with a lawsuit from DOE for failing to provide full access to the female locker room to a transgender female student, despite having provided alternate accommodations and access to female bathrooms. A complaint filed with the OCR by the transgender student was found to be discriminatory due to requiring only that student to change behind privacy curtains in the female locker area.

These two cases illustrate that despite what a district’s policy may allow, unless unrestricted access is granted - to the extreme that female and male teens must be allowed to change within mere feet of each other, the policy may be subject to legal action. To prevent individual districts from becoming targets of costly legal battles, a statewide policy is needed.

If this policy is enacted and the federal government decides to challenge it, Wisconsin's DOJ has stated that this is a policy they would be able to defend. This policy encourages a safe, private and dignified learning environment for *all* students, not just a few, and enables parents who may take issue with a violation of this policy to address that situation privately.

I hope that this policy, a policy that has been tested in federal courts, becomes a means that not only protects our school districts and taxpayers from frivolous federal agency lawsuits, but will continue to foster an expectation of dignity, privacy and a safe learning environment for our students.